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L A W Y E R S

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE COMPANY,
USA CAPITAL REALTY ADVISORS, LLC,
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,
USA CAPITAL FIRST TRUST DEED FUND, LLC,
USA SECURITIES, LLC,

Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**USACM LIQUIDATING TRUST'S THIRD
OMNIBUS OBJECTION TO ALLOWANCE
OF PROOFS OF CLAIM BASED, IN WHOLE,
OR IN PART, UPON INVESTMENT IN THE
BEASTAR LOAN; WITH CERTIFICATE OF
SERVICE**

Hearing Date: December 18, 2009
Hearing Time: 1:30 p.m..

The USACM Liquidating Trust (the "USACM Trust") objects to the allowance of claims based, in whole, or in part, upon investments in the Beaster, LLC Loan ("Beastar Loan"). According to a February 28, 2009 USACM "Loan Summary" the Beastar Loan was repaid by the borrower. There was, however, \$3,073,694.36 in unremitted principal

¹ This bankruptcy case was closed on September 23, 2008

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.

1 associated with the Beastar Loan that never reached the Direct Lenders. The USACM
2 Trust moves the Court to allow the Beastar Claims to the extent they are based upon
3 unremitted principal and disallow the remainder of those claims.

4 MEMORANDUM

5 I. JURISDICTION

6 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
7 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
8 proceeding under 28 U.S.C. § 157(b)(2)(B). The statutory predicates for the relief
9 requested herein are 11 U.S.C. § 502 and Bankruptcy Rule 3007.

10 II. BACKGROUND

11 On April 13, 2006 (“Petition Date”), USA Commercial Mortgage
12 Company (“USACM”), USA Securities, LLC (“USA Securities”), USA Capital Realty
13 Advisors, LLC (“USA Realty”), USA Capital Diversified Trust Deed Fund, LLC
14 (“DTDF”), USA Capital First Trust Deed Fund, LLC (“FTDF” and together with DTDF ,
15 the “Funds”) (collectively the “Debtors”), filed voluntary petitions for relief under chapter
16 11 of the Bankruptcy Code. The Debtors continued to operate their businesses, if any, as
17 debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
18 Post-petition management of the Debtors was under the direction of Thomas J. Allison of
19 Mesirow Financial Interim Management, LLC (“Mesirow”), who served as the Chief
20 Restructuring Officer.

21 On January 8, 2007, the Court entered its Order Confirming the "Debtors' Third
22 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.
23 2376]. Under the Plan, the USACM Trust is the successor to USACM with respect to
24 standing to seek allowance and disallowance of Claims. The USACM Trust exists as of
25 the Effective Date of the Plan, March 12, 2007. Geoffrey L. Berman is the Trustee.
26

1 A “USA Capital Loan Summary as of February 28, 2007” prepared by Mesirow
2 indicates that the Beastar Loan was repaid by the borrower. (**Exhibit A**, attached.)

3 There is \$3,073,694.36 in unremitted principal associated with the Beastar Loan.
4 Scheduled claims for the unremitted principal were deemed allowed unless they were
5 superseded by a proof of claim, in which case the proof of claim were deemed allowed.
6 Attached as **Exhibit B** is list of the Beastar Claims by claimant, claim amount, unremitted
7 principal amount, and approximate amount subject to objection by the USACM Trust.
8

9 **III. APPLICABLE AUTHORITY**

10 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed
11 will be allowed unless a party in interest objects. If a party in interest objects to the proof
12 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and
13 shall allow the Claim except to the extent that the Claim is “unenforceable against the
14 debtor . . . under any . . . applicable law for a reason other than because such claim is
15 contingent or unmatured.” 11 U.S.C. § 502(b). The USACM Trust is entitled to object to
16 proofs of claim under 11 U.S.C. § 502(a). This objection is timely under the Court’s
17 orders.

18 **IV. OBJECTION TO ALLOWANCE OF CLAIMS**

19 The USACM Trust objects to the claims listed on **Exhibit B**, attached, to the extent
20 those claims are based, in whole or in part, upon funds that were repaid to the Direct
21 Lenders from the Beastar Loan in the amounts shown on **Exhibit B**. To the extent the
22 claims listed on **Exhibit B** are based upon unremitted principal, the USACM Trust asks
23 that the Court allow the claims in the amount shown on the **Exhibit B**.
24
25
26

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1 The USACM Trust reserves the right to modify, supplement and/or amend this
2 Objection as it pertains to any Claim or claimant herein. The USACM Trust requests any
3 further relief considered to be appropriate by the Court.

4 Dated: November 18, 2009.

6 **LEWIS AND ROCA LLP**

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8 By: /s/ John Hinderaker (#18024)
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17 *Counsel for USACM Liquidating Trust*

18
19 Copy of the foregoing and pertinent
20 portion of Exhibit B mailed by first class
21 Postage prepaid U.S. Mail on November
22 18, 2009 to all parties listed on Exhibit B
23 attached.

24
25 /s/ Leilani Lista
26 Lewis and Roca LLP